

Chairman James Henderson called the meeting to order at 6:30pm. The meeting was held at the Harpswell Community TV Studio and was taped and broadcast live. The agenda for the meeting was published in "The Times Record" on July 11, 2001. Henderson introduced Board members John Papacosma and Howard Nannen, and appointed associate members Robert White and Don Rogers as voting members for tonight's meeting. Planner Tony Dater and Planning Assistant Debora Levensailor were also present.

Henderson said that the Town of Harpswell would not present their Site Plan Review this evening. He read a memo from Codes Enforcement Officer Douglas Webster stating that the Town would present its formal application at the Board's August 15th meeting. Nannen stated, "I make a motion that the Board table the Town of Harpswell's application until our August 15<sup>th</sup> meeting." Seconded by White. **Carried, 5-0.**

Henderson said the role of the Planning Board is to consider a case in view of the Town's ordinances. He asked the public to address all comments through the chair.

**Minutes of June 20, 2001** – Nannen stated, "I move approval of the June 20<sup>th</sup> minutes as amended." Rogers seconded. **Carried 5-0.**

**Minutes of June 21, 2001** - Nannen stated, "I move approval of the June 21, 2001 minutes as written." White seconded. **Carried, 5-0.**

**Minutes of July 5, 2001** – All Board members had not had a chance to read the July 5<sup>th</sup> minutes, and Nannen stated, "I move we table consideration of approval of the July 5<sup>th</sup> minutes." White seconded. **Carried, 5-0.**

**Milton and Shirley Paul, Subdivision Review/Modification, Shoreland Residential, Tax Map 57-29, Long Island-South, Harpswell (Return from 06-20-01 meeting.)** –

Attorney Chris Livesay, representing Milton and Shirley Paul, presented a review of the Long Island-South subdivision review/modification. The Board had previously required Attorney Livesay to submit the following: (1) the two agent authorization letters, which Livesay presented to the Board; (2) Inland Fisheries and Wildlife wetlands maps, which the Board reviewed, and found that no high or moderate value wetlands abut the section of the subdivision property under consideration; (3) an indication on the subdivision plan map that the structure must conform to Subdivision Ordinance Section 9.4.1 ("Only one (1) dwelling unit is allowed per lot."), which has been indicated on the map. Also, if Subdivision Ordinance 9.4.1 is not the appropriate ordinance in the future, the indication on the map would be forwarded on to the appropriate new ordinance. If the owner wanted to divide the lot, he could make an application to the Planning Board.

Dater asked Livesay if there was presently a dwelling on lot #7. Livesay that there was a building on the lot, and that it may be used as a studio in the future, but it would not contain a bathroom or a kitchen.

White stated, "I move that the Board approve the division of lot number eight of the Long Island-South Subdivision, Tax Map 57-29, as shown on the map dated April 19, 2001, and to be annotated revision number one. And, the requested conditions previously imposed have been met." Nannen seconded. **Carried, 5-0.**

**William and Kathleen Masi, Reconstruction of Non-Conforming Structure, Shoreland Residential, Tax Map 24-56, West Shore Road, Bailey Island** - Mr. Masi presented their application. Mr. Masi said they had replaced an old, dilapidated shed with a new shed. The Board reviewed Dater's memo, dated July 13, 2001. Regarding number two, Dater said the 10' elevation needs to be on the plot plan. Dater said the existing shed is a legal non-conforming structure, and that the application needs to be reviewed under the Shoreland Zoning Ordinance (SZO) 10.3.2.

The Board discussed the present setback of the shed from the sideline, which is 11', but should be 25'. Dater asked Masi if he paid for Federal Flood Insurance, and Masi said no. Dater said it was not in the floodplain. Henderson said the shed is an already built structure. Masi stated, "The shed is not attached to the house. The new shed will be in the exact same spot as the old one...The codes office thought that would be the best site due to the location of the septic system."

Nannen asked if the shed was outside of the 75' setback. Dater said that it was, according to the information submitted, but that there had not been a determination by the codes officer. Nannen said that the Board was looking at the SZO 10.3.2, which talks about the greatest practical extent, and he asked Masi if that was his understanding also. Masi said that it was.

The Board discussed the application in relation to the SZO. White asked Masi how far the shed would be from the house. Masi said it would be twelve feet away. Dater said that if Masi moved the shed closer to the house it would be closer to the high water mark, maybe within 75' of it. Nannen stated, "If you add up the measurements of the house and distances, such as the depth of the lot, etc., you're clearly beyond 75 feet."

Henderson asked for public comment. There was no public comment.

White stated, "I move that the Board approve the application of William and Kathleen Masi for the replacement of a shed on lot 24-56, with a new shed of essentially the same size, and in the exact position as the old shed." Nannen seconded. **Carried, 5-0.**

**Jeffrey Slocum, D.C., Special Exception for Shoreland Zoning Permit to construct single family dwelling within the Resource Protection District, Tax Map 42-8, Mountain Road** - Dr. Jeffrey Slocum presented his application. He proposes to build a 32' X 36' colonial style home, with a two-story detached garage on lot 42-8. He reviewed the history of the property with a chart of facts and dates. This information is already in the file. He said that on September 24, 1997, the Planning Board approved (5-0), a building envelope of 120' from the South property line, 130' from the shoreline on

the South, 110' from the shoreline on the East, and 25' from the sideline as referenced on the plan submitted by the CEO on September 24, 1997. He also said that all of his proposed buildings are less than 1,500 square feet total. He stated, "My plans are well within the required setbacks, and the septic design has been reduced in size by 25%."

The Board reviewed Dater's July 13<sup>th</sup> memo and the points of concern. The Board reviewed the plot plan map of the survey done by Brian Smith Surveying, Inc. Slocum said he would like to move the house closer to the HWM, or closer to the boundary as long as he is within the approved building envelope. Slocum stated, "I want to be as close as I can to the water, within the code... I want to move the septic to one hundred feet from the water." White said, "This is a special exception for a house to be in Resource Protection."

The Board discussed SZO Section 13.1.6 (Special Exceptions) and its applicability to the application. The Board discussed possible structure and septic system placements in the approved building envelope. Nannen asked Slocum, "The plumbing inspector has not approved your current application?" Slocum answered, "Right." Nannen asked Henderson if there was a conflict with SZO 13.1.1 and Henderson said there wasn't because the property is already considered to be in Resource Protection. Dater said the applicant has a memo showing that the flood elevation is 10', and the elevation of the house is 26.6' above mean sea level. Dater stated, "Generally, final judgements of previous boards aren't to be changed... Unless the applicant has new evidence or changes, the Board should probably stick with the previous decision."

The Board reviewed SZO Section 15 (Land Use Standards), especially Section 15.8.3, which concerns "...the least intrusive layout for a driveway." Henderson asked why the driveway could not go back further from the water. Slocum said the property line is at an angle along the shore. Dater said the ordinance (SZO 15.8.1) says 75' from the water. Slocum stated, "There has already been a road cut in." Henderson stated, "One of our concerns is that there'd be more runoff to the water." Dater asked Slocum if the road predated his involvement, and Slocum said that it did. The Board discussed possible road placement options, and SZO Sections 15.11, 15.14, and 15.15. Papacosma said that there was to be no clear cutting. Slocum asked, "Does the eight point system apply within seventy-five feet?" Nannen said, "Yes. That's in the Shoreland Zoning Table, Section 15.2.2." Henderson stated, "I think you should check with the Codes Enforcement Officer when you do any cutting."

The Board reviewed SZO 15.16 (Earthmoving, Erosion, and Sedimentation Control). White asked Slocum if he would build a basement, and Slocum said that he would. White said, "It's very wet in there." Henderson said the Board could require, as a condition, that if the Codes Enforcement Officer determined that this would result in unsafe conditions, the applicant would be required to go back to the Board for approval.

White stated, "I move that the applicant build within the envelope as approved in the Planning Board minutes of September 24, 1997, and that the Board approves the Jeffrey Slocum application to construct a single family dwelling, etc., with the conditions that the

local plumbing inspector approve the proposed subsurface waste water system and its location, and that the applicant be aware of the Shoreland Zoning Ordinance Section 15.16 provisions, and that the applicant follow the Best Management Practices. And, with respect to the Basic Land Use Ordinance Section 13.4.7, the Board finds that the applicant will not have an adverse impact on the information in Subsection 13.4.7.1 through 13.4.7.9. And, with respect to 13.4.7.6, the Board requests that the Codes Enforcement Officer confirm that there are no archeological or historic resources designated in the Comprehensive Plan that will not be protected by the application. And, that the applicant conform with the Shoreland Zoning Ordinance Section 15.8, and that he get approval from the Codes Enforcement Officer for any plan to construct a driveway or any activity that may involve management of water on the driveway.” Rogers seconded. **Carried 5-0.**

The Board discussed hearing item #6, Envision Realty, L.L.C., before the David and Diane Moody application. Nannen stated, “I make a motion that we take and consider agenda item number 6 out of order.” Papacasma seconded. **Carried, 3-2 (White and Rogers-No).**

Henderson stated, “The next item on the agenda is **Envision Realty, L.L.C., Skolfield Farm Shores Subdivision, Tax Map 1-3, Rt. 123, Harpswell- For Purposes of Discussing the Relevance, if any, to the Planning Board’s Decision of May 16, 2001, of Envision Realty, L.L.C.’s Undisclosed Conveyance of the Proposed Site of the Skolfield Farm Shores Subdivision to Leo F. Blair by Deed Dated April 30, 2001 and Recorded in the Cumberland County Registry of Deeds in Book #16257, Page #055.** This item was placed on the agenda so that the Planning Board could receive the Town Attorney’s analysis of an event that was discovered AFTER the Planning Board decision of May 16, 2001. I am referring to the fact that on April 30, 2001, Envision Realty, L.L.C. conveyed the site of the proposed Skolfield Farm subdivision to Leo F. Blair.”

Henderson went on to say, “The Town Attorney’s letter reads as follows.” Henderson read Attorney John Bannon’s letter, dated, July 18, 2001 (See attached). Part of Attorney Bannon’s letter states, “..This newly -discovered standing issue affects neither the Board’s verbal findings and conclusions of May 16, 2001, nor its Notice of Decision dated June 11, 2001. Hence, there is no need for the Board to reconsider or reopen those decisions, and I recommend that the Board not do so. However, I wanted the Board to be aware of the April 30 conveyance, because it would have constituted an independent basis for denying (or more properly, ‘dismissing’) the subdivision application for lack of standing...” Henderson stated, “Attached to the Town Attorney’s letter is the deed from Envision Realty, L.L.C. to Leo F. Blair dated April 30, 2001. The Planning Board acknowledges receipt of the Town Attorney’s letter and the deed, and will place them in the Planning Board’s file on this matter.” Henderson asked if there was any discussion, and there was none.

**David and Diane Moody, Site Plan Review and Shoreland Zoning Permit, Commercial Fisheries I, Tax Map 8-11, Wood Landing, Harpswell –** Planner Dater told the Board that he had received a faxed letter from Don and Pam Giller, which he

distributed to the Board. This letter was not read into the minutes, but was placed in the file. Beverly Wallace, of Red Fish Associates, Inc., representing David and Diane Moody, presented the application to the Board. She said the Moodys are proposing to build a 32' X 56' wharf. She read the Lease of Wharf Rights, signed by Selectmen David Chipman, George Swallow, and David Mercier on March 22, 2001. The Moodys are leasing the right to the land owned by the Town of Harpswell, on which to build a commercial wharf. Mrs. Wallace reviewed the application and her responses to the Shoreland Zoning Ordinance (SZO) Section 15.3 and the Site Plan Review Ordinance (SPRO) Sections 14.1 and 14.2. She also presented her responses to Planner Dater's memo, dated July 13, 2001. The Board reviewed Dater's memo, her responses, and SZO Section 15.

Dater said the selectmen also deal with the size of wharves. Henderson asked Selectman George Swallow to address this issue, and Selectman Swallow stated, "They (the Moodys) can request a 32' wharf, and you (the Planning Board) can approve or deny it. The Selectmen don't deal with the width going down there. We deal with whether or not a wharf will be a hazard to navigation, or if it interferes with the rights of others who might use this area taken up over the tidal zone." White asked, "The Selectmen don't deal with the width of the wharf?" Swallow said, "No." Henderson said, "The Planning Board determines the allowed width." Wallace stated, "The width comes under the Department of Environmental Protection (DEP) permit by rule. Where the full width comes in, it comes in under a full DEP permit. The National Resource Protection Act deals with this. The width allows for rotation of lobster gear..The majority of it will be supported by ledge." White said, "The Moodys are allowed 1,500 traps..Is this a reasonably sized wharf for this?" Rogers said that it was a reasonable size. Wallace stated, "We try to build the minimum sized wharf necessary...He (David Moody) will park in the upper part of his mother's driveway. Codes has agreed to this." White said that there was a letter in the file from the Moseleys saying they approved of Mr. Moody parking there.

Nannen stated, "The parking is my concern here." Wallace said parking had not been a problem. Nannen went on to say, "I'm recalling a previous application before the Board where people were parking all over public property. It was a real problem." Papacosma asked Wallace if the four fishermen already using the area would continue to do so. Wallace said there were only two using it, Mr. Moody and Mr. Allen. Henderson asked "Why doesn't the Shoreland Zoning Ordinance parking requirement apply, since you're applying under the Site Plan Review?" The Board reviewed SPRO 15.7.2. Henderson asked Wallace how many employees there would be, and Wallace said there would be two, Mr. Moody and one other.

Henderson said a condition (based on SPRO 15.7.2.5) could be this application could be approved if there are no more than two employees, and if there are more, the applicant must arrange for additional parking. Ben Wallace said, "There will be parking available next to his mother's garage..This application is for Mr. Moody only. Are we supposed to provide parking for town people too?" Mr. Moody stated, "The other guy that uses this road goes off the Moseley property. He's not using the land..There's room to put

four cars in the driveway.” Dater said, “I think that’s fine, the provision for two vehicles.” The Board reviewed the Basic Land Use Ordinance Section 13. Dater asked Ben Wallace, “The dock is 5’ above the hundred year floodplain?” Wallace said, “That’s about right.”

Henderson told Mrs. Wallace that if they have an agreement with the abutters and the agreements are recorded in the Cumberland County Registry of Deeds, that should be sufficient. The applicants had requested several waivers. Nannen stated, “I would move that we waive the requirements of SPRO 14.2.2, a boundary survey showing setbacks. The applicants have indicated that they have letters from the abutters waiving their setbacks. And, Site Plan Review Ordinance Section 14.2.9, a topographic survey; Site Plan Review Ordinance Section 14.3.2, no improvements other than the dock; and Site Plan Review Ordinance Section 14.3.13, stormwater calculations, as requested.” White seconded. **Carried, 5-0.** Henderson stated, “I move that we determine that the requirements of the Site Plan Review Ordinance Section 14 are complete.” White seconded. **Carried, 5-0.**

The Board reviewed the SPRO Sections 15.7, 15.14, 15.16, 15.17, 15.21, and the BLUO Section 13.4.7. Henderson stated, “I make a motion that the land use standards of the Shoreland Zoning Ordinance Section 15 are met, and that a 32’ X 65’ dock has been justified by the applicant, as it relates to the SZO Section 15.3.4.2, and that the Board finds that the provisions for parking, Section 15.7, have been met for the parking of two vehicles. And, the provisions of Section 15.19 regarding archeological and historic sites will be met when the applicants obtain a letter from the Maine Historic Preservation Commission indicating that there are no such sites listed on or eligible to be listed on the National Registry of Historic Places, and when the applicants present it to the Codes Enforcement Officer.” White seconded. **Carried, 5-0.** Henderson stated, “I move that the Board finds that the application meets the approval standards of the Site Plan Review Ordinance Section 15.” Rogers seconded. **Carried 5-0.** Henderson stated, “I move that the Board finds that the application complies with the requirements of the Basic Land Use Ordinance Section 13.4.7, with the exception of 13.4.7.6, which will be in compliance if the Codes Enforcement Officer certifies in writing that no archeological or historical resources are designated in the Comprehensive Plan.” Nannen seconded. **Carried, 5-0.** Henderson stated, “I move that the application submitted by David and Diane Moody for a Site Plan Review and a Shoreland Zoning permit in a Commercial Fisheries I Zone, Tax Map 8-11, Wood Landing, Harpswell, be approved based on the findings of the Planning Board at its meeting this evening.” White seconded. **Carried, 5-0.** Henderson stated, “I make a motion to adjourn.” White seconded. **Carried, 5-0.** Henderson adjourned the meeting at 10:45pm.

Respectfully submitted,

Debora A. Levensailor, Planning Assistant

